

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL MEYERS,

Defendant-Appellant.

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UNPUBLISHED

September 13, 2007

No. 271211

Wayne Circuit Court

LC No. 05-011408-02

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from a bench trial conviction of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), for which he was sentenced to three years' probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Police officers went to a vacant house known for narcotics trafficking and conducted surveillance. An officer observed two different occupants engage in hand-to-hand transactions with visitors. One occupant, codefendant Benford, was found in possession of four capsules each containing pieces of crack cocaine. Defendant was seated at a dining room table where a plastic bag containing a large chunk of crack cocaine, 44 capsules each containing pieces of crack cocaine, some empty capsules, a cell phone, and some cash were located. The officers testified that defendant and Benford were the only people in the house.

Defense witnesses testified that the house was legally occupied when the incident occurred. The resident and two guests testified that they and several other people were present when the police came in and arrested defendant and Benford. They denied that defendant was seated at the dining room table and that any drugs were on the table.

Defendant first contends that the trial court violated his right against double jeopardy by reinstating the case after dismissal and then conducting a trial. "A double jeopardy issue constitutes an issue of law that is reviewed de novo on appeal." *People v Artman*, 218 Mich App 236, 244; 553 NW2d 673 (1996).

“A person may not be twice placed in jeopardy for a single offense.” *People v Mehall*, 454 Mich 1, 4; 557 NW2d 110 (1997). In a bench trial, jeopardy attaches when the court begins to hear evidence. *People v Robbins*, 223 Mich App 355, 362; 566 NW2d 49 (1997). If the defendant is acquitted on the basis of insufficient evidence, he may not be retried. *Mehall, supra* at 5. If the court’s ruling is based on a different ground, retrial would not violate double jeopardy principles even if the court’s order is designated as an acquittal. *Id.*

In this case, the trial court noted that a judgment of acquittal had been entered in error and reinstated the case. There is no record of an acquittal having been granted or of an order of acquittal having been entered in this case. The order submitted by defendant is clearly captioned with the number of a different case. Further, there is no suggestion that any evidence or testimony was received in this case before the April 26, 2006, trial giving rise to the conviction at issue. Accordingly, we conclude that defendant’s trial was not barred on double jeopardy grounds.

Defendant next contends that the evidence was insufficient to sustain the court’s verdict. A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000).

This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Possession with intent to deliver requires proof that the defendant knowingly possessed a controlled substance. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). “Possession is a term that ‘signifies dominion or right of control over the drug with knowledge of its presence and character.’” *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). The defendant need not own or have actual physical possession of the substance to be found guilty of possession; constructive possession is sufficient. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Id.* at 520. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance. *People v Meshell*, 265 Mich App 616, 621-622; 696 NW2d 754 (2005). Possession may be proved by circumstantial evidence and any reasonable inferences drawn therefrom. *Nunez, supra*. The defendant’s mere presence at a place “where drugs are found is insufficient to prove constructive possession. Instead, some additional connection between the defendant and the contraband must be shown.” *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999).

A police officer testified to seeing two different men engaging in hand-to-hand transactions indicative of narcotics trafficking. Defendant and another man were the only people found in the house and, at the time the police entered, defendant was seated at a table containing a large chunk of crack cocaine and smaller pieces of crack cocaine packaged for sale. Close proximity to contraband in plain view is evidence of possession. See, e.g., *Wolfe, supra* at 521; *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995); *People v Summers*, 68 Mich

App 571, 584; 243 NW2d 689 (1976), rev'd on other grounds 452 US 692; 101 S Ct 2587; 69 L Ed 2d 340 (1981). Such evidence was sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant possessed the cocaine.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Pat M. Donofrio  
/s/ Deborah A. Servitto